

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:14CR41
(Judge Keeley)

THOMAS CUETO,

Defendant.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
RECOMMENDATION THAT DEFENDANT'S GUILTY PLEA
BE ACCEPTED AND SCHEDULING SENTENCING HEARING**

On September 2, 2014, the defendant, Thomas Cueto ("Cueto"), appeared before United States Magistrate Judge John S. Kaull to enter a plea of GUILTY to Count One of the Indictment. Cueto stated that he understood that the magistrate judge is not a United States District Judge, and consented to pleading before the magistrate judge. This Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Cueto's statements during the plea hearing and the agreement of the parties on the record to accept the government's proffer as an independent basis in fact, the magistrate judge found that Cueto was competent to enter a plea, that the plea was freely

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and voluntarily given, that he was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. On September 2, 2014, the magistrate judge entered an Opinion/Report and Recommendation Concerning Plea of Guilty in Felony Case ("R&R") (dkt. no. 70), finding a factual basis for the plea and recommended that this Court accept the plea of guilty to Count One of the Indictment.

The magistrate judge directed the parties to file any written objections to the report and recommendation within fourteen (14) days after service of the report and recommendation. The magistrate judge further directed that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the report and recommendation. The parties did not file any objections.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R, **ACCEPTS** Cueto's plea, and **ADJUGES** him **GUILTY** of the crime charged in Count One of the Indictment.

Pursuant to Fed. R. Crim. P. 11(e)(2) and U.S.S.G. § 6B1.1(c), acceptance of the proposed plea agreement and stipulated addendum to the plea agreement, is **DEFERRED** until the Court has received and reviewed the presentence report prepared in this matter.

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Pursuant to U.S.S.G. § 6A1 et seq., it is hereby **ORDERED** that:

1. The Probation Officer undertake a presentence investigation of **THOMAS CUETO** and prepare a presentence report for the Court;

2. The Government and Cueto are to provide their versions of the offense to the probation officer by **October 3, 2014**;

3. The presentence report is to be disclosed to Cueto, defense counsel, and the United States on or before **November 18, 2014**; however, the Probation Officer is not to disclose the sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence report on or before **December 2, 2014**;

5. The Office of Probation shall submit the presentence report with addendum to the Court on or before **December 16, 2014**; and

6. Counsel may file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the factual basis from the statements or motions, on or before **December 30, 2014**.

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Magistrate Judge Kaul continued Cueto on bond pursuant to the Order Setting Conditions of Release (dkt. no. 10) entered on June 17, 2014.

The Court will conduct the sentencing hearing for the defendant on **Friday, January 9, 2015 at 2:30 P.M.** at the **Clarksburg, West Virginia** point of holding court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record, the defendant and all appropriate agencies.

DATED: September 19, 2014

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE